

Admin.

November 6, 1996

## Second Supplement to Memorandum 96-58

### **New Topics and Priorities: Supplemental Information**

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This memorandum provides supplemental information concerning matters referred to in Memorandum 96-58.

#### **Application of Family Protection Provisions to Nonprobate Transfers**

In Memorandum 96-58 the staff notes that issues are starting to crop up relating to application of probate family protections to nonprobate assets, and that these issues ought to be addressed.

Since the memorandum was written, the Court of Appeal decided the case of *Parson v. Parson*, 56 Cal. Rptr. 2d 686 (1996). In that case, the decedent disinherited his wife of 17 years and passed *all* his assets through a revocable trust to his son from a prior marriage. The wife petitioned the trial court for a statutory family allowance and homestead out of the trust assets. The trial court's award of a family allowance was reversed by the Court of Appeal, which noted that the statute "authorizes the award of a family allowance only in connection with the administration of an estate. No estate exists here because the deceased disposed of his assets through a revocable trust. [The statutes] do not authorize the payment of a family allowance from a revocable trust where, as here, no estate exists."

The law has gone to great lengths to protect persons dependent on a decedent. However, that law developed in the context of a probate system which is now largely bypassed by estate planners. It is a significant policy question whether the law should be revised to take account of the nonprobate revolution.

#### **Discovery in Civil Cases**

The Commission has received a suggestion from Richard E. Guilford of Santa Ana (attached to this memorandum) for a proposed revision of the statute governing production of documents in discovery.

Mr. Guilford notes that when a demand for production of documents is served, Code of Civil Procedure Section 2031 requires a response to the demand within 20 days and actual production of the documents within 30 days. The

responding party routinely seeks an extension of the 20-day period and agrees to respond and produce at the same time. “Separating response from production by ten days achieves nothing” — it simply makes for a more cumbersome procedure. Mr. Guilford believes that litigation practitioners would welcome a simple change in the statute so as to obligate the responding party to both respond and produce on the same day — 30 days after service of the demand. “I offer the above suggestion based on my more than 25 years of litigation practice.”

This project could be done under existing Commission authority. It would not involve significant Commission or staff resources. If the Commission is interested, we would work it into the agenda on a time-available basis.

Respectfully submitted,

Nathaniel Sterling  
Executive Secretary

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**Richard E. Guilford, 10/27/96 5:42 PM, Discovery statutes - CCP §2031****1**

Date: Mon, 28 Oct 1996 00:42:08 +0000  
From: "Richard E. Guilford" <rguil4d@primenet.com>  
Reply-To: rguil4d@primenet.com  
Organization: Guilford family  
MIME-Version: 1.0  
To: Staff@clrc.ca.gov  
Subject: Discovery statutes - CCP §2031  
X-MIME-Autoconverted: from 8bit to quoted-printable by primenet.com id AAA10994

The present statute enables a party to obtain documents, writings and things in the possession of another party. Upon receipt of a demand to produce, the Statute (Code of Civil Proc. §2031) requires that the responding party must serve a verified RESPONSE within 20 days, and then must physically PRODUCE the items no less than 30 days after service of the Demand.

The present arrangement, requiring a RESPONSE 20 days after and then the PRODUCTION 30 days after, is needlessly cumbersome. The separation by statute of the TIME for doing the two acts (RESPONSE and PRODUCTION) is honored more in the breach than in the observance. Responding parties typically, almost uniformly, seek extensions and then easily agree that the two acts shall be done at the same time. Separating RESPONSE from PRODUCTION by ten days achieves nothing.

Litigation practitioners would welcome a simple change in the STATUTE so as to obligate the responding party to both RESPOND and PRODUCE on the same day -- 30 days after service of the Demand.

I offer the above suggestion based on my more than 25 years of litigation practice.

Respectfully submitted,

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